INFORMATION BULLETIN 2010-8

December 21, 2010

Changes to Various Fiscal Measures

This information bulletin provides a detailed description of the application details of various fiscal measures. The changes are technical in nature for the most part and are designed to improve the coherence and integrity of the tax system.

Among other things, they stipulate the non-taxation of amounts that a handicapped person who participates in certain programs receives on account of reimbursement of transportation expenses, a restructuring of payments of the refundable tax credit for solidarity, changes to the refundable tax credit for Québec film and television production to better adapt it to subcontracts, the tax treatment applicable to Agri-Québec program set up by La Financière agricole du Québec, and the recognition of new centres as college technology transfer centre and as eligible public research centre.

For information regarding the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et de la fiscalité at 418 691-2236.

The French and English versions of this bulletin are available on the ministère des Finances website at : www.finances.gouv.qc.ca

Paper copies are also available, on request, from the Direction des communications, at 418 528-9323.

Finances Québec

Changes to Various Fiscal Measures

1. **MEASURES CONCERNING INDIVIDUALS** **3**

1.1 Non-taxation of transportation expenses of handicapped persons participating in certain social support or assistance programs 3

1.2 Measures designed to recover tax paid by an individual regarding certain amounts reimbursed by his succession 4

1.3 Restructuring of solidarity tax credit payments 8

1.4 Review of expenses eligible for tax assistance for medically assisted procreation 10

1.5 Details of the calculation of the transfer of the recognized parental contribution 15

1.6 Advance payments of certain refundable tax credits suspended 18

2. **MEASURES CONCERNING BUSINESSES** **20**

2.1 Tax treatment applicable to Agri-Québec program 20

2.2 Changes to the refundable tax credit for Québec film and television production 21

2.3 Changes to the refundable tax credit for Québec film and television production and to the refundable tax credit for film production services 27

2.4 Changes to the refundable tax credit for book publishing 32

2.5 Legal effects of replacement or revocation of a document for the purposes of various tax incentive measures 36

2.6 Recognition of new centres as a college technology transfer centre and as an eligible public research centre 38

3. **FEDERAL LEGISLATION AND REGULATIONS** **40**

3.1 Harmonization with revised legislative proposals concerning foreign investment entities and non-resident trusts 40

3.2 Harmonization concerning certain prescribed American donees 42

3.3 Harmonization with the tax rebate measure concerning the Royal Canadian Legion 43

1. MEASURES CONCERNING INDIVIDUALS

1.1 Non-taxation of transportation expenses of handicapped persons participating in certain social support or assistance programs

Since 1998, last-resort financial assistance benefits have been taxable for the purposes of Québec's tax system.

In general, where an individual's income consists solely of benefits paid under the Social Assistance Program or the Social Solidarity Program established under the Individual and Family Assistance Act, such individual does not pay tax since his income is below the zero-tax threshold.

However, if such an individual also receives supplementary allowances or benefits for participating in a social support and assistance or employment assistance program, he may have tax payable if his taxable income exceeds his zero-tax threshold.

As part of the programs offered by the Minister of Employment and Social Solidarity, supplementary benefits may be granted in particular regarding expenses resulting from travelling from a participant's residence to the location where the activities take place and, in exceptional cases, for parking expenses close to where the activities take place.

Since these expenses are of a personal nature, the supplementary benefits received in such cases must be included in calculating the participant's income.

Analogously, where an employer covers the cost of an employee's travel between his home and his place of work, the employee must, as a general rule, include the value of such benefit in calculating his income.

However, as regards employment, there are various exceptions to this rule, including the one that applies to employees who are blind or suffer from a mobility impairment. An employee who suffers such a handicap is not required to include, in calculating his income, an amount he received or benefited from because of his employment and that represents the value of a benefit, or an allowance not exceeding a reasonable amount for the expenses he incurred, in relation to his transportation between his ordinary place of residence and his place of work, including parking close to such place of work.

This exception is designed to improve the opportunities of handicapped persons to enjoy a fairer and more complete professional, social and personal life.

In this context, to improve the fairness of the tax system, the tax legislation will be amended to stipulate that a handicapped person who enjoys a measure or participates in an employment assistance program or a social support and assistance program established pursuant to the Individual and Family Assistance Act will not be required to include, in calculating his income, the amounts he receives on account of a refund of the expenses caused by transportation between his ordinary place of residence and the location where the activities take place, including parking expenses close to the location of the activities.

For the purposes of this measure, a person will be considered a handicapped person if he demonstrates, by producing a medical report, that his physical or mental condition is substantially impaired or altered, likely permanently or indefinitely, and that, for this reason and in view of his socio-personal characteristics, he has severely limited capacity for employment.

This measure will apply as of taxation year 2011. It will also apply to any taxation year of an individual for which the Minister of Revenue may, on the date of publication of this information bulletin, determine or determine anew the tax payable by such individual, for such year, and make an assessment or a new assessment, or establish a supplementary assessment, where the refunded expenses arise from participation in a social support and assistance program established pursuant to the Individual and Family Assistance Act.

1.2 Measures designed to recover tax paid by an individual regarding certain amounts reimbursed by his succession

The tax system includes a variety of measures enabling an individual who reimburses, in a given year, an amount received on account of remuneration or certain government benefits that he included in calculating his income for a prior year to recover all or part of the tax paid regarding such amount.

However, where such a reimbursement is made by the legal representative of a deceased individual in a year after that of the death, these measures do not always enable the individual's succession to recover the tax paid regarding the amount that was the object of the reimbursement.

Accordingly, so that the death of an individual is not an obstacle to the application of the measures implemented to reflect the fact that tax was paid regarding an amount that, had it been reimbursed before the end of the year in which it was received, would not have been taxed, amendments will be made to the tax legislation.

❑ Reimbursement of wages or salary

An individual may generally deduct, in calculating his income from an office or employment, an amount he pays or that is paid for him, in a year, pursuant to an agreement according to which he must reimburse any amount paid to him for a period during all of which he did not carry out the duties associated with his office or employment, provided such amount was included in the calculation of his income for the year or a prior year.

Such a reimbursement agreement may come into play, in particular, to stipulate that an employee will have to reimburse the wages he received in the course of leave paid in advance if he fails to return to his employment at the end of his leave. Similarly, an employee who is the victim of an industrial accident may be required, under such an agreement, to reimburse the wage loss insurance benefits paid to him by his employer in the event he receives an income replacement indemnity from another insurance plan.

The deduction, in calculating an individual's income from an office or employment for a given year, of an amount relating to a prior year may lead to the realization of a loss from such office or employment if, for the given year, the amount of the reimbursement exceeds the income from such office or employment. In addition, if the individual's income otherwise determined for the year is insufficient to offset all or part of such loss, the individual will suffer, for this year, a loss other than a capital loss that he may generally carry over to another year in accordance with the loss carry-over mechanism. Briefly, this mechanism allows the carry-over of a loss other than a capital loss, suffered in a year, to the preceding three taxation years and to the following twenty taxation years.

However, it may be impossible for an individual to take advantage of the loss carry-over mechanism if his taxable income is insufficient for the years covered by this mechanism. This may be the case for an individual afflicted with a permanent disability following an accident and whose income, after he ceases to hold his job, consists solely of non-taxable income replacement indemnities.

In such a situation and at the individual's request, the Minister of Revenue may, subject to certain conditions being satisfied, extend the retrospective carry-over period of the loss other than a capital loss suffered by the individual beyond three years, by authorizing the individual to carry such loss back to the taxation year for which the amount that was the object of a reimbursement was included in the calculation of his income from an office or employment.

While the legal representative of a deceased individual may deduct, in calculating the income of the succession from an office or employment, the amount he reimbursed in a year following the year of the individual's death, it may be impossible for the succession to recover the tax previously paid by the individual regarding the amount that was the object of the reimbursement, if his income was insufficient for the year of the reimbursement and for those covered by the loss carry-over mechanism.

To improve the fairness of the tax system, the tax legislation will be amended to stipulate that where, during a given year, the legal representative of a deceased individual reimburses, in accordance with an agreement according to which the individual was required to reimburse any amount paid to him for a period during all of which he did not carry out the duties associated with his office or employment, an amount that had been included in calculating the individual's income from an office or employment for a prior year and that, because of the deduction of the amount thus reimbursed in calculating the succession's income for the year of the reimbursement, the succession suffers a loss from an office or employment, the legal representative of the deceased individual may elect that such loss be deemed a loss from an office or employment suffered by the individual in the year of his death and not a loss of the succession.

Such election must be made no later than the filing-due date applicable to the succession of the deceased individual for the taxation year during which the reimbursement was made.

In addition, to benefit from this measure, the legal representative of the deceased individual must file, no later than the date by which he must make such election, an amended fiscal return for the individual for the year of the latter's death and, if necessary, a fiscal return or an amended fiscal return for the individual for each year covered by the carry-over of a loss other than a capital loss arising from the deemed realization of the loss from an office or employment.

Once an amended fiscal return for the year of the individual's death and, if applicable, a fiscal return or an amended fiscal return for the taxation years covered by the carry-over of a loss other than a capital loss are filed, the Minister of Revenue must determine or determine again the tax payable of the deceased individual for those years.

This measure will apply regarding a reimbursement of an amount made after December 31, 2009 pursuant to a reimbursement agreement. It will also apply regarding a reimbursement of an amount made before January 1, 2010 pursuant to a reimbursement agreement if the legal representative of the deceased individual makes the stipulated election no later than December 31, 2011.

❑ Reimbursement of certain government benefits

An individual who reimburses, in a given year, a benefit received under the Québec Pension Plan, the Canada Pension Plan, the Québec Parental Insurance Plan or certain benefits received under the federal legislation relating to employment insurance,[1] hereunder "covered government benefit", that was included in calculating his income for a prior year, may deduct, in calculating his income for the given year, the amount thus reimbursed.

1 A benefit received pursuant to the Unemployment Insurance Act or the Employment Insurance Act, other than a benefit that must be reimbursed under Part VII of the Employment Insurance Act.

However, rather than claiming this deduction, an individual may invoke the averaging mechanism for the reimbursement of a covered government benefit. Briefly, this mechanism enables the individual to receive a refundable tax credit corresponding to the tax reduction he would have received for each of the prior years to which the covered government benefit is attributable, if such benefit was the object of a reimbursement during such year.

For greater clarity, only an individual who resides in Québec on the last day of the taxation year in which he reimburses a covered government benefit may invoke the averaging mechanism. To that end, the last day of a taxation year of an individual who dies or ceases to reside in Canada during the year is deemed to be the day of his death or the last day on which he resided in Canada, as the case may be.

While the legal representative of a deceased individual may deduct, in calculating the income of the succession, the amount of a covered government benefit he reimbursed in a year following the year of the individual's death, the succession cannot invoke the averaging mechanism for the reimbursement of such benefit. It may thus be impossible for the succession to recover the tax previously paid by the individual regarding the benefit that was the object of the reimbursement if its income is insufficient for the year of the reimbursement.

To improve the fairness of the tax system, the tax legislation will be amended to stipulate that where, during a given year, the legal representative of a deceased individual reimburses a covered government benefit that had been included in calculating the individual's income for one or more years prior to the given year, the legal representative of the deceased individual may elect that the amount thus reimbursed be deemed to have been reimbursed not by the succession, but by the individual immediately before his death.

Such election must be made no later than the filing-due date applicable to the succession of the deceased individual for the taxation year during which the reimbursement was made.

In addition, to benefit from this measure, the legal representative of the deceased individual must file, no later than the date by which he must make such election, an amended fiscal return for the individual for the year of death.

After such return is filed, the Minister of Revenue must determine or determine again the tax payable of the deceased individual for such year.

This measure will apply regarding a reimbursement of a covered government benefit made after December 31, 2009. It will also apply regarding a reimbursement of such a benefit made before January 1, 2010 if the legal representative of the deceased individual makes the stipulated election no later than December 31, 2011.

1.3 Restructuring of solidarity tax credit payments

To better meet the needs of low- and middle-income households, it was announced, in the 2010-2011 Budget Speech[2] that the refundable tax credit for the Québec sales tax, the property tax refund and the refundable tax credit for individuals living in a northern village would be grouped into a single refundable tax credit – the solidarity tax credit.

Essentially, this new tax credit, which, starting in July 2011, will provide more assistance to households to mitigate costs related to the Québec sales tax and housing costs in particular, will be paid on a monthly basis so that the tax assistance is more closely linked to the needs it seeks to meet.

To reflect the fact that the monthly payments of the solidarity tax credit during its first year will not begin until July, the amounts allowed on account of this tax credit will exceptionally be distributed, for 2011, over the last six months of the year, i.e. from July to December.

However, so that the most disadvantaged do not have to wait until July 2011 to obtain the first solidarity tax credit payment, measures have been taken for them to receive transitional tax assistance covering, among others, the first six months of 2011.

As of July 2011, all persons eligible for the solidarity tax credit who applied for it may receive, within the first five days of each month included in a 12-month period beginning July 1 of a calendar year, a payment of this tax credit by deposit directly into an account they hold at a financial institution that has an establishment in Québec.

To ensure greater consistency in the structure of payments of the tax credit, changes will be made to the terms and conditions applicable to such payments.

❑ New condition concerning the deposit of small amounts

To more fully align solidarity tax credit payments with the rules set by the Canadian Payments Association, changes will be made to the rule on the deferral of payment of any amount less than $2 determined on account of this tax credit for a given month.[3]

More specifically, in the case where the amount determined for an individual for a month included in the maximum period of 12 months beginning July 1 of a calendar year is less than $20, such amount will not be paid during such month. However, if, during the period that applies to the individual, either an amount equal to or greater than $20 must be paid for a month after the given month, or the total of the unpaid amounts added to the amount that must be paid for a month later than the given month reaches at least $20, such amount will be deposited during such later month.

---

2 MINISTÈRE DES FINANCES DU QUÉBEC, *2010-2011 Budget – Additional Information on the Budgetary Measures*, March 30, 2010, p. A.8 to A.24.

3 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2010-6*, June 29, 2010, p. 8.

In addition, any amount not immediately paid before the beginning of the last month of the payment period that applies to the individual will be deposited during such last month, unless the total of the amounts determined for each month included in such period is less than $2.

❑ Adjustment of payments made to persons receiving transitional assistance in 2011

Prior to the announcement of the new solidarity tax credit, most recipients of last-resort financial assistance[4] received, as a monthly adjustment, an amount in lieu of the advance payment of the refundable tax credit for the Québec sales tax that was added to their basic financial assistance benefit.

So that for the months preceding the month of the first payment of the solidarity tax credit, such persons may continue to receive tax assistance mitigating the burden of the Québec sales tax, this monthly adjustment was converted into a transitional tax credit.

This transitional assistance is granted to the same categories of households as those who were entitled to the monthly adjustment, on the basis of time receiving last-resort financial assistance.

Accordingly, regarding each of the first six months of 2011, an eligible household is to receive an amount of $29.83 if it consists of two adults, and $14.92 if it consists of a single adult. The latter amount is raised by $10.16 if the adult does not live in the same housing unit as another single adult or another family.

The amount granted for a given month to an eligible household will be incorporated into the calculation of its basic financial assistance benefit and may, as a result, be reduced.

To reflect the fact that the tax assistance provided by the solidarity tax credit for 2011 is divided into six payments rather than twelve and that, for the first six months of 2011, households eligible for the transitional tax credit may receive amounts designed, like the solidarity tax credit, to mitigate the costs related to the Québec sales tax, each payment of the transitional tax credit attributable to 2011 will be converted into an advance payment of the solidarity tax credit.[5]

Where an advance payment is granted to an eligible household consisting of two adults, each member of the household will be deemed to have received an amount equal to 50% of such payment on that account.

---

4 I.e. the financial assistance granted under the Social Assistance Program or the Social Solidarity Program stipulated by the Individual and Family Assistance Act.

5 For greater clarity, the amount granted for a given month to an eligible household on account of advance payment of the solidarity tax credit will be incorporated into the calculation of its basic financial assistance benefit and may, as a result, be reduced.

All of the amounts received by an individual who was a recipient of last-resort financial assistance on account of advance payments of the solidarity tax credit will be applied to reduce the amounts that will be determined, for the last six months of 2011, for the individual or, as the case may be, his covered spouse on account of the solidarity tax credit.

However, for a given month, only 50% of the amount determined for an individual who is, at the beginning of such month, a recipient of last-resort financial assistance[6] may be subject to such a reduction, provided his status as a recipient was made known to the Minister of Revenue at least 21 days prior to the stipulated date for the payment of such amount.

For greater clarity, like the adjustments that were paid monthly by the Minister of Employment and Social Solidarity in lieu of the advance payments of the tax credit for the Québec sales tax, the amounts received on account of advance payments of the solidarity tax credit will not be considered amounts payable under a tax law.

1.4 Review of expenses eligible for tax assistance for medically assisted procreation

To recognize the costs borne by infertile couples who wish to start a family, the tax system allows a refundable tax credit for the treatment of infertility equal to 50% of the eligible expenses paid by an individual or his spouse in a year. The maximum amount of expenses eligible for this tax credit is $20 000 per year. Accordingly, the amount of the tax credit a person who opts for assisted procreation to have a child can receive can reach $10 000 per year.

The expenses considered eligible for the purposes of this tax credit are expenses related to artificial insemination or *in vitro* fertilization treatments undergone by an individual or the individual's spouse in order to enable them to become parents, and that would otherwise be eligible for the tax credit for medical expenses and, if need be, the tax credit for expenses relating to medical care. This may involve, among others, amounts paid to a physician or a private hospital for assisted procreation treatments as well as expenses paid for drugs prescribed by a physician for such treatments and registered by a pharmacist.

Since August 5, 2010, assisted procreation activities in Québec are subject to legal oversight[7] stipulating, in particular, that any *in vitro* fertilization treatment done in Québec must take place in a centre for assisted procreation that holds a license issued by the Minister of Health and Social Services and that generally one embryo at a time may be implanted in a woman further to an *in vitro* fertilization activity.

---

6 See note 4.

7 This legal oversight is stipulated in the Act respecting clinical and research activities relating to assisted procreation and the Regulation respecting clinical activities related to assisted procreation.

Along with this legal oversight, a program covering assisted procreation treatments was implemented by the Québec Health Insurance Plan instituted by the Health Insurance Act. For the purposes of this plan, insured services include:

— services required for *in vitro* fertilization and the transfer of a fresh embryo for at most three stimulated cycles of *in vitro* fertilization or the natural cycle equivalent,[8] up to a live birth or after each live birth, provided the services are supplied in a centre for assisted procreation that holds a license issued by the Minister of Health and Social Services by a physician practicing there;

— services required for artificial insemination supplied by a physician, including retrieval of sperm by medical intervention.

In addition, the list of drugs covered by the Québec Prescription Drug Insurance Plan[9] has been changed to add various drugs prescribed in the course of medically assisted reproduction activities.

In this context, changes will be made to the tax credit for infertility treatment as well as to the tax credit for medical expenses and the tax credit for expenses relating to medical care to make them more consistent with Québec's policy regarding assisted procreation.

❑ Expenses eligible for the refundable tax credit for the treatment of infertility

■ Expenses paid in respect of *in vitro* fertilization

The expenses paid after December 31, 2010 in respect of *in vitro* fertilization treatment undergone after August 4, 2010 will be considered eligible expenses for the refundable tax credit for the treatment of infertility only if they are paid:

— either for assisted procreation services supplied by a physician for *in vitro* fertilization and are required:

  — either for the purpose of ovarian stimulation or ovulation induction;

  — for the purpose of retrieval of eggs or ovarian tissue;

  — for the purpose of sperm extraction by medical intervention;

  — for the purposes of freezing and storing sperm;

---

8 For this purpose, two natural cycle *in vitro* fertilizations count for one stimulated cycle *in vitro* fertilization. Accordingly, the plan covers, up to a live birth or after each live birth, a maximum of six natural cycle *in vitro* fertilizations following which a fresh embryo may be transferred.

9 This plan, instituted by the Québec government, ensures all Quebecers fair access to the medication required by their state of health. Coverage under this plan is provided either by the Régie de l'assurance maladie du Québec, or by insurers providing group insurance or administrators of private-sector employee benefit plans.

  - for the purpose of *in vitro* fertilization, including assisted hatching services and sperm micro-injection services;
  - for the purposes of preimplantation genetic diagnosis to identify serious monogenic diseases or chromosomal abnormalities;
  - or for the purposes of embryo transfer, including cryopreservation of an embryo;[10]
- for drugs relating to *in vitro* fertilization treatment if the following conditions are satisfied:
  - they can only be legally acquired to be used by a person by prescription from a physician;
  - they are not covered by the Québec Prescription Drug Insurance Plan;
  - their purchase is registered by a pharmacist;
- on account of travel expenses, provided they would otherwise be expenses eligible for the tax credit for medical expenses;
- or on account of travel and lodging expenses, provided they would otherwise be expenses eligible for the tax credit for expenses relating to medical care and are covered by a certificate issued by a physician indicating that care equivalent to that obtained is not available, in Québec, within 250 kilometres of where the individual undergoing the *in vitro* fertilization treatment lives and, if applicable, that the individual is incapable of travelling unassisted.

In addition, to be considered eligible expenses, the expenses paid must be attributable to an uninsured *in vitro* fertilization activity that a woman of childbearing age used, provided the following conditions are satisfied:

- it is expected that, following the *in vitro* fertilization activity, a single embryo will be transferred or, after a physician has considered the quality of the embryos, a maximum of two, in the case of a woman age 36 or under, and three including no more than two blastocysts, in the case of a woman age 37 or over;
- where the *in vitro* fertilization activity is carried out in Québec, the assisted procreation services required in the course of the activity, other than the services required for the purpose of ovarian stimulation or ovulation induction and those required for the purpose of sperm freezing and storage, are supplied or deemed supplied in a centre for assisted procreation that holds a license issued in accordance with the Regulation respecting clinical activities related to assisted procreation, by a physician practising there.

---

10 For greater clarity, the assisted procreation services for which the expenses paid give rise to the tax credit are those described in sections 34.4 and 34.5 of the Regulation respecting the application of the Health Insurance Act and in paragraphs *a* and *c* of section 34.6 of such regulation.

For that purpose, an *in vitro* fertilization treatment an individual undergoes and regarding which no cost for services described in sections 34.4 and 34.5 of the Regulation respecting the application of the Health Insurance Act[11] is assumed, on behalf of the individual, by the administrator of a universal health insurance plan, or can be reimbursed to the individual by such administrator, will be considered an uninsured *in vitro* fertilization activity.

For the purposes of this definition, a universal health insurance plan means a plan that is:

— either a plan constituted under a statute of a province or territory establishing a health insurance plan that is a health insurance plan within the meaning of the Canada Health Act[12] or a plan constituted under a statute of another legislative authority establishing a public health insurance plan;

— or a plan established by the Canadian government and that stipulates health insurance protection for the benefit of members of the Canadian Forces or members of the Royal Canadian Mounted Police.

Where assisted procreation services are supplied, at any time during the six-month period beginning August 5, 2010, in a centre for assisted procreation that did not, at such time, hold a license issued in accordance with the Regulation respecting clinical activities related to assisted procreation, such services will be deemed to have been supplied in a centre for assisted procreation that holds such a license if the centre was already operating August 5, 2010 and if a license was issued to it no later than February 5, 2011 in accordance with such regulation.

■ Treatment undergone by a person without a spouse

Currently, the *in vitro* fertilization treatments an individual or the individual's spouse undergo must be followed for the purpose of enabling the individual and the individual's spouse to become parents for the expenses paid regarding such treatments to give rise to the refundable tax credit for the treatment of infertility.

To better adapt the tax credit to today's reality, this requirement will be withdrawn regarding expenses paid after December 31, 2010 in respect of *in vitro* fertilization treatment undergone after August 4, 2010.

---

11 The services described in sections 34.4 and 34.5 of the Regulation respecting the application of the Health Insurance Act correspond to assisted procreation services, other than the services required for the purpose of ovarian stimulation or ovulation induction and those required for the purpose of sperm freezing and storage, that are described in the list of expenses eligible for the tax credit.

12 Within the meaning of this statute, a health insurance plan is a plan constituted by a statute of a province or territory for the delivery of insured health services, i.e. hospital, medical or dental surgical services supplied to insured persons, with the exception of health services to which a person is entitled or is eligible under another federal statute or a provincial statute relating to industrial accidents.

For greater clarity, an individual who is a resident of Québec at the end of December 31 of a given year after 2010[13] may receive a tax credit equal to the lesser of $10 000 or 50% of all of the eligible expenses the individual paid in the year, or that the person who was the individual's spouse at the time of payment paid in the year, in respect of any *in vitro* fertilization treatment undergone after August 4, 2010 that the individual or, if applicable, the individual's spouse, used to become a parent.

■ Expenses paid in respect of artificial insemination treatment

Expenses related to artificial insemination treatment undergone after August 4, 2010 and paid after December 31, 2010 will no longer be considered eligible expenses for the purposes of the refundable tax credit for the treatment of infertility. However, such expenses may give rise to the tax credit for medical expenses and the tax credit for expenses relating to medical care, provided they are otherwise considered eligible expenses for the purposes of these tax credits.

❑ Changes to the tax credit for medical expenses and the tax credit for expenses relating to medical care

The medical expenses giving rise to the tax credit for medical expenses and the travel and lodging expenses giving rise to the tax credit for expenses relating to medical care will not include expenses paid after December 31, 2010 that are related to *in vitro* fertilization treatment undergone after August 4, 2010, where such expenses are attributable to:

— either an uninsured *in vitro* fertilization activity, within the meaning to be given to this expression for the purposes of the refundable tax credit for the treatment of infertility, provided such expenses are eligible expenses for the purposes of the calculation of such tax credit;

— an *in vitro* fertilization activity used by a women who is not of childbearing age;

— an *in vitro* fertilization activity following which more than one embryo was transferred, unless, in accordance with the decision of a physician having considered the quality of the embryos, a maximum of two embryos was transferred, in the case of a woman age 36 or under, and a maximum of three embryos including at most two blastocysts, in the case of a woman age 37 or over;

— or an *in vitro* fertilization activity carried out in Québec in the course of which the services described in sections 34.4 and 34.5 of the Regulation respecting the application of the Health Insurance Act[14] are not supplied or deemed supplied in a centre for assisted procreation that holds a license issued in accordance with the Regulation respecting clinical activities related to assisted procreation, by a physician who practises there.

---

13 For the purposes of the tax credit, an individual who resided in Québec immediately prior to his death is deemed to reside in Québec at the end of December 31 of the year of his death.

14 See note 11.

Where assisted procreation services are supplied, at any time during the six-month period beginning August 5, 2010, in a centre for assisted procreation that did not, at such time, hold a license issued in accordance with the Regulation respecting clinical activities related to assisted procreation, such services will be deemed to have been supplied in a centre for assisted procreation that holds such a license if the centre was already operating on August 5, 2010 and if a license is issued to it no later than February 5, 2011 in accordance with such regulation.

1.5 Details of the calculation of the transfer of the recognized parental contribution

Since 2007, the tax system has allowed certain students, who are at least 18 years old, who have little or no tax payable, the possibility of transferring to their parents, up to the maximum established for the year, an amount on account of recognized parental contribution. The amount thus transferred enables the parents to reduce the tax otherwise payable by that amount.

Briefly, the amount an eligible student[15] can transfer to his father and mother for a given taxation year must not be greater than the excess, over the tax otherwise payable by the student for the given year, of 20% of any of the following amounts, as the case may be:

— where the eligible student completed, in the year, at least two recognized terms of study, the amount of recognized essential needs for the year;[16]

— where the eligible student completed, in the year, only one recognized term of study, the amount remaining after subtracting from the amount of recognized essential needs, an amount for one term of study.[17]

However, since the essential needs of persons under age 18 are covered by the refundable tax credit for child assistance, the determination of the maximum amount a student can transfer for the year of his 18th birthday is subject to special rules.

15 Essentially, an eligible student for a year means a person who is at least 18 years old during the year and is enrolled full-time in vocational training or college or university studies at an institution designated by the Minister of Education, Recreation and Sports for the purposes of the loans and bursaries program for full-time studies in vocational training at the secondary level and for full-time studies at the postsecondary level.

16 This amount, which is automatically indexed each year, is equal to $6 925 for 2010.

17 This amount, which is automatically indexed each year, is equal to $1 940 for 2010.

In recent months, on two occasions, changes have been announced that have an effect on the maximum amount a student can transfer to his parents on account of the recognized parental contribution. These changes were designed to take into account the new solidarity tax credit[18] as well as the adjustments attributable to receiving benefits paid under a public compensation plan.[19]

Accordingly, to improve consistency among the various components that must be taken into consideration in determining the eligible amount on account of the transfer of the recognized parental contribution, the tax legislation will be amended to specify the rules for calculating this amount.

❑ Rules applicable to an eligible student age 18 or over throughout a year

The amount an eligible student may transfer to his father and mother for a given taxation year after 2009 must not exceed, where the eligible student is age 18 or over throughout the year, the amount determined according to the following formula:

0.2(A – B) – C – D

For the purposes of this formula:

— the letter A corresponds to:

  — either the amount of recognized essential needs for the year where the eligible student completed, in the year, at least two recognized terms of study;

  — or the amount remaining after subtracting from the amount of recognized essential needs for the year, the amount allowed for the year in relation to one term of study, where the eligible student completed, in the year, only one recognized term of study;

— the letter B corresponds to all of the amounts each representing the adjustment determined, for the year, regarding the covered benefits attributable to the year, within the meaning given to this expression in the second paragraph of section 752.0.0.3 of the Taxation Act, of which the eligible student is the recipient;[20]

— the letter C corresponds, where the given year follows 2010, to all of the amounts each of which is an amount that the eligible student received on account of the solidarity tax credit regarding a given month included in the year;

— the letter D corresponds to the tax otherwise payable by the eligible student for the given year.

---

18 MINISTÈRE DES FINANCES DU QUÉBEC, *2010-2011 Budget – Additional Information on the Budgetary Measures*, March 30, 2010, p. A.23 and A.24.

19 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2010-6*, p. 14.

20 Essentially, a covered benefit attributable to a taxation year means an amount that constitutes either an income replacement indemnity or compensation for the loss of financial support, determined in such year under a public compensation plan and established on the basis of net income.

❑ Rules applicable to an eligible student who turns 18 during a year

The amount an eligible student may transfer to his father and mother for a given taxation year after 2009 during which he turns 18 must not exceed the amount determined according to the following formula:

$$0.2 \left[A + [B/12(C - D)] - E\right] - F - G$$

For the purposes of this formula:

— the letter A corresponds to the amount allowed for the year in relation to one term of study, for each recognized term of study (maximum of two terms) that the eligible student completed in the year;

— the letter B corresponds to the number of months of the year that follow the month during which the eligible student turns 18;

— the letter C corresponds to the amount of recognized essential needs for the year;

— the letter D corresponds to the result obtained after multiplying the amount allowed for the year in relation to one term of study by 2;

— the letter E corresponds to all of the amounts each representing the adjustment determined, for the year, regarding the covered benefits attributable to the year, within the meaning given to this expression in the second paragraph of section 752.0.0.3 of the Taxation Act,[21] of which the eligible student is the recipient;

— the letter F corresponds, where the given year follows 2010, to all of the amounts each of which is an amount that the eligible student received on account of the solidarity tax credit regarding a given month included in such year;

— the letter G corresponds to the tax otherwise payable by the eligible student for the given year.

❑ Rules applicable in the case of a tax adjustment relating to the retrospective determination of certain indemnity benefits

According to the existing tax legislation, where covered benefits attributable to a given year are determined – for the first time or once again[22] – in a later year and such determination, had it been made in the given year, would have given rise to a tax adjustment other than the one made, such determination results in tax consequences for the year in which it is made, if the recipient of the covered benefit resides in Québec at the end of such year.

---

21 See preceding note.

22 Such new determination may have the result of increasing, reducing or eliminating the amount of the adjustment in respect of covered benefits attributable to a given year.

More specifically, such tax consequences, consisting of an addition in the calculation of tax otherwise payable or of a refundable tax credit, as the case may be, can occur where, in a given taxation year, covered benefits attributable to a taxation year prior to the given year but later than taxation year 2003, hereunder called "prior year", are determined and such determination, had it been made in the prior year, would have had the effect of changing the amount taken into consideration in calculating the tax otherwise payable by the recipient of the covered benefits for such year on account of all the amounts each representing the adjustment calculated regarding the covered benefits attributable to such year.

To establish the tax consequences relating to the determination in a given year of the covered benefits attributable to a prior year, hereunder called "retrospective determination of covered benefits", a rectification formula must be used.

One of the components of the rectification formula concerns the effect a retrospective determination of covered benefits may have on the transfer of the recognized parental contribution where such determination is made after December 31, 2009.

To reflect the changes that will be made, as of taxation year 2010, to the formulas used to establish the eligible amount on account of the transfer of the recognized parental contribution, the component of the rectification formula relating to such a transfer must be applied only where a retrospective determination of covered benefits is made regarding a given year after 2009. In addition, such component must correspond to the excess of the amount a person deducted in calculating his tax otherwise payable for a given year, on account of the transfer, by the recipient of the covered benefits, of the recognized parental contribution over the amount such person could have deducted on that account for the given year had the determination of the covered benefits been made in that year.

1.6 Advance payments of certain refundable tax credits suspended

Under the current tax legislation, the Minister of Revenue is authorized, provided certain conditions are satisfied, to make advance payments to households that so request an amount on account of the tax credit for home maintenance of an elderly person, the tax credit for child care expenses and the various components of the tax credit granting a work premium.

Currently, where the claimants satisfy the conditions set for receiving, during a given year, advance payments, the Minister of Revenue is required to make such payments despite the fact that the claimants did not file their tax return for a year prior to the given year, that they are under investigation or that information calling into question in particular their eligibility for the tax credit has subsequently been brought to his attention.

To maintain the integrity of the tax system, the tax legislation will be amended to authorize the Minister of Revenue to require an individual who applies to receive advance payments on account of the tax credit for home maintenance of an elderly person, the tax credit for child care expenses or a component of the tax credit granting a work premium, hereunder called "tax credit subject to advances", to provide him with any document or information he considers necessary to assess his application.

Moreover, the Minister of Revenue may decline to act on the application of an individual to obtain, for a given year, advance payments of a tax credit subject to advances if the individual or his spouse, as the case may be, received advance payments of such a tax credit for a year prior to the given year and has still not filed, at the time of processing the application, his tax return for the prior year despite the fact that the filing-due date for such return has expired.

Similarly, the Minister of Revenue may cease to make advance payments of a tax credit subject to advances to an individual for a given year, or suspend such payments, if he concludes that the individual or his spouse, as the case may be, still has not filed his tax return for a year prior to the given year for which he received advance payments of such a tax credit despite the fact that the filing-due date for such return has expired.

In addition, the Minister of Revenue may cease to make advance payments to an individual of a tax credit subject to advances, suspend such payments or reduce their amount where information or documents are brought to his attention that justify such action.

These amendments will take effect as of the day following the day of publication of this information bulletin.

2. MEASURES CONCERNING BUSINESSES

2.1 Tax treatment applicable to Agri-Québec program

To improve the capacity of agricultural and aquacultural businesses in Québec to manage their risks, La Financière agricole du Québec has announced a new program applicable as of 2010. This program, called Agri-Québec,[23] was created under An Act respecting La Financière agricole du Québec[24] and is funded by the Québec government.

Briefly, under the Agri-Québec program, a participant can make an annual deposit in a savings account, receive in the account, as consideration, an equivalent amount from La Financière agricole du Québec and make withdrawals from the account as needed. The participant's deposits and the contributions of La Financière agricole du Québec bear interest that is deposited in the account.

The Agri-Québec program is similar to and complements the Agri-investissement program, a joint program arising from a federal-provincial program instituted under the Farm Income Protection Act,[25] in which Québec participates. As with Agri-investissement, a participant's account with Agri-Québec consists of two Funds: Fund No. 1 and Fund No. 2. Fund No. 1 corresponds to the eligible participant's deposits, while Fund No. 2 corresponds to the government's contributions and interest. Similarly, as with Agri-investissement, a participant's account with Agri-Québec can be transferred to a surviving spouse, a corporation or a divorced or separated spouse.

Currently, Québec's tax legislation provides for special treatment in relation to a participant's account in the Agri-investissement program, as a net income stabilization account,[26] and to the Fund No. 2 of this account, as NISA Fund No. 2.[27] This special treatment stipulates, among other things, that the amounts paid into a Fund No. 2 on account of government contributions and interest are taxable, as income from property for a taxation year of a participant, only on their withdrawal,[28] whether real or deemed.[29]

---

23 *Programme Agri-Québec*, (2010) 142 G.O.Q., Partie I, 610 (nº 22, 2010/06/05).

24 R.S.Q., c. L-0.1.

25 S.C. 1991, c. 22.

26 *Taxation Act*, R.S.Q., c. I-3 (TA), sec. 1 "net income stabilization account".

27 *Ibid.*, sec. 1 "NISA Fund No. 2".

28 *Ibid.*, sec. 92, par. 2, sec. 92.1, sec. 92.7, subpar. viii.1 of subpar. *a* and sec. 92.5.2.

29 In particular, in the case of acquisition of control of a participating corporation, in the case of the death of a participant or the case of alienation of a right in a Fund No. 2 (sec. 92.5.2.1, 437.1 and 462.0.1 LI).

This special treatment also enables a tax-free alienation (rollover) of a Fund No. 2 of the Agri-investissement program to occur when it is transferred at death to the spouse or a trust for the benefit of the spouse,[30] when it is transferred to a corporation[31] or when it is transferred to a spouse or to a former spouse in settlement of rights arising from the marriage,[32] where the conditions stipulated in the tax legislation are satisfied.

Moreover, this special treatment prohibits the deduction, in calculating a taxpayers' income, of an amount of interest and certain financial expenses regarding, in particular, a loan, in relation to a period following which he uses the loan to make a deposit to his account with the Agri-investissement program.[33]

Since the Agri-Québec program does not result from a federal-provincial agreement instituted under the Farm Income Protection Act and is not covered by Québec's tax legislation, a participant's account in the Agri-Québec program does not, therefore, constitute a net income stabilization account within the meaning of this tax legislation, in the same way that the Fund No. 2 of such an account does not constitute a NISA Fund No. 2.

A disparity in tax treatment between the Agri-investissement and Agri-Québec programs is not desirable and could jeopardize the objectives and the success of the latter program. Accordingly, Québec's tax legislation will be will be amended to grant the Agri-Québec program tax treatment similar to that of Agri-investissement.[34]

Consequently, Québec's tax legislation will be amended so that a participant's account in the Agri-Québec program is considered a net income stabilization account and that the Fund No. 2 of such account is considered a NISA Fund No. 2.

These amendments will apply as of year 2010.

2.2 Changes to the refundable tax credit for Québec film and television production

The refundable tax credit for Québec film and television production applies to the labour expenditures incurred by a qualified corporation that produces a Québec film and generally corresponds to 35% or 45% of the qualified labour expenditures incurred to produce the film. However, the qualified labour expenditures giving rise to this tax credit may not exceed 50% of the production expenses of the film so that the tax assistance generally cannot exceed 17.5% or 22.5% of such expenses.

---

30 TA, sec. 441.1.

31 *Ibid.*, sec. 462.0.1, subpar. *b*.

32 *Ibid.*, sec. 462.0.1, subpar. *a*.

33 *Ibid.*, sec. 175.2, subpar. *d.1*.

34 The Québec government has asked the Canadian government to offer the same treatment for purposes of the federal tax system.

As part of the application of this tax credit, the 45% rate applies regarding labour expenditures tied to the production of certain feature-length, medium or short films, certain broadcasts intended for young people and certain documentaries, provided they are in French (hereunder "qualified French-language productions"). This is also true of giant screen films, regardless of language.

Other productions, where they include labour expenditures for computer special effects or animation, can qualify for additional tax assistance at 10% in regard to these expenditures. Accordingly, the higher rate of tax credit for such labour expenditures is also 45%.

The rates are also higher for qualified labour expenditures incurred in relation to a regional production that are directly attributable to services supplied in Québec outside the Montréal region by a producer established outside the Montréal region. Accordingly, in the case of a qualified French-language production and a giant-screen film, the rate of the increase for regional production is 10%, while in the case of any other production, it is 20%. Thus, the higher rates of the tax credit are the same, i.e. 55%.

Lastly, a 10% increase, calculated on the labour expenditure, applies to a production that is qualified for the tax credit and is a feature film of fiction or a single documentary, provided it is not qualified for any financial assistance from a public organization. Accordingly, the higher rates of tax credit are 55% in the case of a qualified French-language production and a giant-screen film, and 45% in the case of any other production.

Regardless of the increases that may apply, the rate of the tax credit in relation to a labour expenditure can never, in total, exceed 65%. In addition, qualified labour expenditures may not exceed 50% of the production expenses of the film, with the result that the tax assistance may reach 32.5% of such expenses.

In general, the "labour expenditure" of a qualified corporation for a taxation year in regard to a film means all of the following amounts provided they are reasonable in the circumstances:

— the wages and salaries directly attributable to the film that the corporation incurred in the year,[35] provided they relate to services supplied in relation to the stages of production of the film ranging from the screenplay to postproduction[36] and that it paid to its qualified employees.

35 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the film to the Société de développement des entreprises culturelles (SODEC), the wages and salaries it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

36 Or in relation to another stage of the production that is completed after postproduction within a time considered reasonable by the Minister of Revenue but that cannot exceed the date that occurs 18 months after the fiscal year end of the qualified corporation that includes the date of the recording of the trial print of the film.

— the portion of remuneration, other than a salary or wages, that the corporation incurred in the year[37] in relation to the stages of production of the film covered in the preceding paragraph and that it paid:

  — either to an individual, provided that portion of the remuneration is reasonably attributable either to services personally rendered by such individual, or to the wages of the individual's qualified employees who rendered services in the course of the production of film;

  — or to a corporation that has an establishment in Québec, that is neither a corporation mentioned in the following subparagraph, nor a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission (hereunder "broadcaster"), nor a corporation not at arm's length with a broadcaster, provided such portion of the remuneration is reasonably attributable to the salaries of the qualified employees of such corporation that rendered services in the course of the production of the film;

  — or a corporation that has an establishment in Québec, whose sole shareholder is an individual and whose activities consist mainly of supplying the services of such individual (hereunder "sole-shareholder corporation"), provided such portion of the remuneration is reasonably attributable to services supplied by the latter in the course of the production of the film;

  — or to a partnership carrying on a business in Québec, provided that portion of the remuneration is reasonably attributable either to services supplied by an individual who is a member of the partnership, or to the wages of the partnership's qualified employees who supplied services in the course of the production of the film.

A "qualified employee" of an individual, a corporation or a partnership means, regarding a film, an individual who resides in Québec at any time of the calendar year during which he supplied services in the course of the production of the film.

The definition of the expression "labour expenditure" for the purposes of the tax credit for Québec film and television production does not allow, generally speaking, a subcontractor who entered into a service contract with the qualified corporation to delegate to a second subcontractor the execution of all or part of the work entrusted to it by the qualified corporation.

37 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the film to SODEC, the portion of the remuneration it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

To further support Québec's film and television industry and adapt the tax assistance to the prevailing situation in this industry, i.e. the frequent presence of successive levels of subcontractors, the tax legislation will be amended to, on the one hand, broaden the base of the tax credit in certain cases of subcontracting and, on the other, allow a qualified corporation that enters into a service contract with a subcontractor with which it is at arm's length to use an alternative method for calculating its labour expenditure regarding such contract.

❑ Broadening the base of the tax credit

The tax legislation will be will be amended to enable a qualified corporation that enters into a service contract with a qualified subcontractor, which then delegates to a second qualified subcontractor the execution of all or part of the work entrusted to it by the qualified corporation, to include in the calculation of the amount of its labour expenditure a part of the remuneration incurred and paid to the second subcontractor.

For the purposes of the tax credit, a qualified subcontractor is a subcontractor of the qualified corporation that is an individual, a corporation that has an establishment in Québec or a partnership carrying on a business in Québec and that is not a broadcaster or a corporation not at arm's length with a broadcaster.[38]

For the purposes of the tax credit, a second qualified subcontractor is a subcontractor that is at arm's length with the qualified subcontractor at the time its contract with the latter is entered into, that is an individual, a corporation that has an establishment in Québec or a partnership carrying on a business in Québec and that is not a broadcaster or a corporation not at arm's length with a broadcaster.[39]

The qualified corporation may include in calculating the amount of its labour expenditure 65% of the portion of the remuneration incurred by the qualified subcontractor in the year[40] in relation to the stages of production of the film ranging from the screenplay to postproduction[41] and that it paid to the second qualified subcontractor, provided such portion of the remuneration:

---

38 However, a corporation not at arm's length with a broadcaster may be a qualified subcontractor if the contract the latter entered into with the qualified corporation covers services supplied exclusively at the postproduction stage of the film within the meaning of the changes to the refundable tax credit for Québec film and television production and the refundable tax credit for film production services announced in this information bulletin, on p. 27.

39 However, a corporation not at arm's length with a broadcaster may be a second qualified subcontractor if the contract the latter entered into with the qualified subcontractor covers services supplied exclusively at the postproduction stage of the film within the meaning of the changes to the refundable tax credit for Québec film and television production and the refundable tax credit for film production services announced in this information bulletin, on p. 27.

40 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the film to SODEC, the portion of the remuneration the qualified subcontractor incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

41 See note 36.

— is reasonably attributable to services supplied in the course of production of the film;[42] and

— is reasonable in the circumstances.

However, if the services covered by the contract between the qualified subcontractor and the second qualified subcontractor (hereunder "second subcontract") are supplied, directly or indirectly, by an employee of the second subcontractor or of any other subcontractor of another level, who does not reside in Québec at any time of the calendar year during which he supplied such services, the salary or wages of such employee, provided they are reasonably attributable to such services, are subtracted from the amount of the labour expenditure of the qualified corporation.

Accordingly, if services covered by the second subcontract are the object of a subcontract of another level, with a corporation that does not have an establishment in Québec or with a partnership that does not carry on a business in Québec, 65% of the remuneration paid to such corporation or such partnership for such subcontract, provided it is reasonably attributable to such services, is also subtracted from the amount of the labour expenditure of the qualified corporation.[43]

Similarly, if services covered by the second subcontract are the object of a subcontract of another level, with a broadcaster or a corporation not at arm's length with a broadcaster, 65% of the remuneration paid to such broadcaster or such corporation for such subcontract, provided it is reasonably attributable to such services, is also subtracted from the amount of the labour expenditure of the qualified corporation.[44]

❑ Amendments allowing the use of an alternative calculation method

The tax legislation will be amended to enable a qualified corporation to use an alternative method of calculating its labour expenditure regarding a service contract it enters into with a recognized subcontractor (hereunder "initial contract").

For the purposes of the tax credit, a recognized subcontractor is a qualified subcontractor that is at arm's length with the qualified corporation at the time the initial contract is entered into.

---

42 Accordingly, the remuneration of the second qualified subcontractor that is reasonably attributable to the sale or rental of goods by the latter must be removed.

43 In such a case, to avoid double subtraction, the wages and salaries of employees who do not reside in Québec and who supply these services will not be subtracted from the amount of the labour expenditure of the qualified corporation.

44 In such a case, the preceding note is also applicable. However, the remuneration paid to a corporation not at arm's length with a broadcaster will not be subtracted provided it is reasonably attributable to services supplied at the postproduction stage of the film. See the changes to the refundable tax credit for Québec film and television production and to the refundable tax credit for film production services announced in this information bulletin on p. 27.

The qualified corporation may, regarding the initial contract, elect either to calculate the amount of its labour expenditure according to what the current legislation stipulates,[45] or to calculate the amount of its labour expenditure by applying the following alternative method.

According to the alternative method, the amount of the qualified corporation's labour expenditure regarding the initial contract entered into with a recognized subcontractor, for a taxation year, is equal to 65% of the portion of the remuneration it incurred in the year[46] in relation to the stages of production of the film ranging from the screenplay to postproduction[47] and that it paid to the recognized subcontractor, provided such portion of the remuneration:

— is reasonably attributable to services supplied in the course of production of the film;[48] and

— is reasonable in the circumstances.

However, if the services covered by the initial contract are supplied, directly or indirectly, by an employee of the recognized subcontractor of the qualified corporation or of any other subcontractor of another level, who does not reside in Québec at any time of the calendar year during which he supplied such services, the salary or wages of such employee, provided they are reasonably attributable to such services, are subtracted from the amount of the labour expenditure of the qualified corporation regarding the initial contract.

Accordingly, if services covered by the initial subcontract are the object of a subcontract of another level, with a corporation that does not have an establishment in Québec or with a partnership that does not carry on a business in Québec, 65% of the remuneration paid to such corporation or such partnership for such subcontract, provided it is reasonably attributable to such services, is also subtracted from the amount of the labour expenditure of the qualified corporation regarding the initial contract.[49]

---

45 Taking into account the broadening of the base of the tax credit announced previously and the changes to the refundable tax credit for Québec film and television production and to the refundable tax credit for film production services announced in this information bulletin on p. 27.

46 See note 37.

47 See note 36.

48 Accordingly, the remuneration of the recognized subcontractor that is reasonably attributable to the sale or rental of goods by the latter must be removed.

49 In such a case, to avoid double subtraction, the wages and salaries of employees who do not reside in Québec and who supply these services will not be subtracted from the amount of the labour expenditure of the qualified corporation regarding the initial contract.

Similarly, if services covered by the initial subcontract are the object of a subcontract of another level, with a broadcaster or a corporation not at arm's length with a broadcaster, 65% of the remuneration paid to such broadcaster or such corporation for such subcontract, provided it is reasonably attributable to such services, is also subtracted from the amount of the labour expenditure of the qualified corporation regarding the initial contract.[50]

Lastly, the election of the alternative method of calculating the labour expenditure will have a direct impact on the calculation of the various increases since they are established either on the basis of the labour expenditure in the case of the increase relating to certain productions that do not qualify for any financial assistance from a public organization, or on the basis of a portion of the labour expenditure in the case of the increase for computer animation and special effects and the increase for regional production.

❑ Application date

These amendments will apply to the taxation years of a qualified corporation beginning after December 31, 2009.

2.3 Changes to the refundable tax credit for Québec film and television production and to the refundable tax credit for film production services

The refundable tax credit for Québec film and television production (hereunder "film credit") applies to the labour expenditures incurred by a qualified corporation that produces a Québec film and generally corresponds to 35% or 45% of the qualified labour expenditures incurred to produce the film. However, the qualified labour expenditures giving rise to this tax credit may not exceed 50% of the production expenses of the film so that the tax assistance generally cannot exceed 17.5% or 22.5% of such expenses.

The refundable tax credit for film production services (hereunder "services credit") applies to the qualified production expenses relating to the various stages of production or to the carrying out of a foreign production, or of a production that does not satisfy the Québec content criteria that give rise to the film credit. In general, the services credit is calculated at 25% of all of the qualified production expenses incurred by a qualified corporation in Québec and attributable to the various stages of carrying out a qualified production. Qualified production expenses correspond to the total of the cost of qualified labour and the cost of qualified properties.

50 In such a case the preceding note is also applicable. However, the remuneration paid to a corporation not at arm's length with a broadcaster will not be subtracted provided it is reasonably attributable to services supplied at the postproduction stage of the film. See the changes to the refundable tax credit for Québec film and television production and to the refundable tax credit for film production services announced in this information bulletin on p. 27.

For the purposes of both the film credit and the services credit, a corporation that holds a broadcast license issued by the Canadian Radio-television and Telecommunications Commission (hereunder "broadcaster") or a corporation that, at any time in a taxation year or the 24 months preceding it, is not at arm's length with a broadcaster, is not a qualified corporation.

Accordingly, the exclusion of corporations not at arm's length with a broadcaster as a qualified corporation for the purposes of the two tax credits is designed to maintain the integrity of the rule excluding broadcasters. Indeed, without the exclusion of corporations not at arm's length with a broadcaster, it would be easy to circumvent the rule excluding broadcasters simply by forming production subsidiaries.

However, it is possible that a corporation that is essentially an independent producer may not be at arm's length with a broadcaster. In such a case, in spite of such a producer and the broadcaster not being at arm's length, the producer can receive the film credit or the services credit as the case may be, subject to certain conditions.[51]

In addition, with the same objective of maintaining the integrity of the measure relating to the ineligibility for the film credit and the services credit of a corporation that is a broadcaster and a corporation not at arm's length with a broadcaster, in general, the remuneration paid to either of such corporations, where it acts as subcontractor for a qualified corporation, is excluded from the amount of the labour expenditure of the qualified corporation for the purposes of the film credit and from the qualified production expenses of the qualified corporation for the purposes of the services credit.

Accordingly, the remuneration paid by a qualified corporation to a corporation not at arm's length with a broadcaster for services supplied in relation to any stage of production of the film is not part of either the labour expenditure of the qualified corporation for the purpose of the film credit, or of the qualified production expenses of the qualified corporation for the purposes of the services credit. The scope of this exclusion is needlessly broad and can be reduced so as not to cover the remuneration paid to a corporation not at arm's length with a broadcaster for services supplied exclusively at the postproduction stage of the film, without impairing the integrity relating to the ineligibility for the film credit and the services credit of a corporation that is a broadcaster and a corporation not at arm's length with a broadcaster.

Accordingly, amendments in this sense will be made to the tax legislation.

---

51 More specifically, for a taxation year, a corporation not at arm's length with a broadcaster must, to receive either of these tax credits, obtain a certificate from the Société de développement des entreprises culturelles (SODEC) certifying that more than 50% of its production expenses incurred in the last three taxation years, preceding the taxation year during which a film was completed, were incurred in relation to films broadcast by a broadcaster with which the corporation is at arm's length.

❑ Refundable tax credit for Québec film and television production

■ Existing labour expenditure

The "labour expenditure" of a qualified corporation for a taxation year regarding a film means, in particular, provided it is reasonable in the circumstances, the portion of the remuneration, other than salary or wages, that the corporation incurred in the year[52] in relation to the stages of production of the film ranging from the screenplay to postproduction[53] and that it paid to a corporation that has an establishment in Québec, that is neither a broadcaster nor a corporation not at arm's length with a broadcaster, provided such portion of remuneration is reasonably attributable to the wages of the qualified employees[54] of such corporation who supplied services in the course of production of the film.

■ Change to the definition of labour expenditure

The tax legislation will be amended so that the portion of remuneration incurred regarding the production of a film by a qualified corporation and paid to a subcontractor that is a corporation not at arm's length with a broadcaster is no longer excluded[55] from the labour expenditure of the qualified corporation, for the purposes of the film credit, provided such portion is reasonably attributable to the wages of the qualified employees[56] of the subcontractor corporation who supplied services exclusively at the postproduction stage in the course of the production of the film.

❑ Refundable tax credit for film production services

■ Existing qualified production expenses

Qualified production expenses of a qualified corporation for a taxation year correspond to the total of the cost of qualified labour and the cost of qualified properties for such year.

---

52 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the film to SODEC, the portion of the remuneration it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

53 Or in relation to another stage of the production that is completed after postproduction within a time considered reasonable by the Minister of Revenue but that cannot exceed the date that occurs 18 months after the fiscal year end of the eligible corporation that includes the date of the recording of the trial print of the film.

54 A "qualified employee" of a corporation means an individual who resides in Québec at any time of the calendar year during which he supplied services in the course of the production of the film.

55 Provided it satisfies the eligibility criteria otherwise established.

56 See note 54.

- **Existing qualified labour cost**

The qualified labour cost of a qualified corporation, for a taxation year, means, in general, the wages or salaries, including the associated payroll taxes,[57] that were incurred by the corporation, in the year, for an employee as well as the cost of any service contract,[58] incurred by the corporation with a service provider, in relation to a qualified production,[59] provided:

— they relate to services supplied in Québec, in the course of the year, in relation to the production stages ranging from the screenplay to postproduction;[60]

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.[61]

Moreover, the cost of a service contract is not part of the qualified labour cost of a corporation if the supplier of services is a broadcaster or a corporation not at arm's length with a broadcaster.

- **Change to the definition of qualified labour cost**

The tax legislation will be amended so that the cost of a service contract incurred by a qualified corporation in relation to a qualified production and paid to a subcontractor that is a corporation not at arm's length with a broadcaster is no longer excluded[62] from the cost of qualified labour of the qualified corporation, for the purposes of the services credit, provided such cost relates to services supplied exclusively regarding the postproduction stage of the qualified production.[63]

---

57 These are the payroll taxes the employer must pay, such as contributions to the Québec Pension Plan, to the Commission des normes du travail, to the Québec Parental Insurance Plan and to Employment Insurance. However, they exclude contributions to the Health Services Fund (HSF).

58 Including the fees the qualified corporation must pay to organizations like the Union des artistes (UDA) and the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA).

59 And, for the taxation year during which it submits an application for an advance ruling to SODEC, the qualified labour cost it incurred in a year prior to the one during which it submitted such application.

60 See note 36.

61 However, a wage or salary, including the associated payroll taxes, or a cost of a service contract incurred directly or indirectly regarding a producer, an author, a scriptwriter, a director, a production designer, a director of photography, a music director, a composer, a conductor, an editor, a visual effects supervisor, an actor (speaking role) or an interpreter is qualified only if such person is an individual who resides in Québec at the time when the services are provided in the course of the completion of the qualified production.

62 Provided it satisfies the qualification criteria otherwise established.

63 This change will also apply, with the necessary adaptations, to the labour expenditure relating to computer animation and special effects on the basis of which the increase for computer animation and special effects is still calculated in the case of a qualified small-budget production.

- **Existing cost of qualified properties**

The cost of qualified properties of a qualified corporation, for a taxation year, means, in general, the costs incurred by the corporation, in the year, regarding the acquisition or rental, in Québec, of tangible goods (including software), in relation to a qualified production,[64] provided:

— they relate to goods used in Québec, in the course of the year, in relation to the production stages ranging from the screenplay to postproduction;[65]

— they are incurred with:

  — an individual who resides in Québec at the time the goods are acquired or rented, in the course of the completion of the qualified production; or

  — a corporation or partnership that carries on a business in Québec and has an establishment there at the time the goods are acquired or rented, in the course of the completion of the qualified production;

— they are directly attributable to the completion of the qualified production; and

— they are reasonable in the circumstances.

Moreover, the cost of the qualified properties of a corporation does not include the cost of goods acquired or rented from a broadcaster or a corporation not at arm's length with a broadcaster.

- **Change to the definition of cost of qualified properties**

The tax legislation will be amended so that the cost incurred regarding the acquisition or rental of a property by a qualified corporation and paid to a subcontractor that is a corporation not at arm's length with a broadcaster is no longer excluded[66] from the cost of qualified properties of the qualified corporation, for the purposes of the services credit, provided the property is used exclusively regarding the postproduction stage of the qualified production. [67]

---

64 And, for the taxation year during which it submits an application for an advance ruling to SODEC, the cost of qualified goods it incurred in a year prior to the one during which it submitted such application.

65 See note 53.

66 Provided it satisfies the eligibility criteria otherwise established.

67 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2010-6*, June 29, 2010, p. 22. The notion of cost of qualified properties of a qualified corporation, for a taxation year, was broadened to include the following expenses, in relation to a qualified production: certain travel expenses, meal expenses including beverages, as well as the cost of catering services on the location of shooting, lodging expenses and the costs incurred regarding and insurance contract or a contract relating to a performance bond, in relation to a qualified production. Provided such expenditures and such costs, that would be paid to a corporation not at arm's length with a broadcaster, may be linked to the postproduction stage of a film, they will also qualify.

❑ Postproduction stage

For the purposes of the amendments covered in this announcement, the postproduction stage includes in particular:

— transcoding and duplication;

— digitization, compression and duplication of DVDs and CD-ROMs;

— encoding for video on demand;

— subtitling for persons who are deaf or hard of hearing;

— subtitling of films; and

— described video for the people with low vision.

❑ Application date

These amendments will apply to the taxation years of a qualified corporation beginning after December 31, 2009.

2.4 Changes to the refundable tax credit for book publishing

The refundable tax credit for book publishing covers the labour expenditure attributable to the preparation and printing of an eligible book or eligible group of books. It corresponds to all of the following amounts:

— an amount equal to 35% of the eligible labour expenditure attributable to preparation costs regarding an eligible book or eligible group of books;

— an amount equal to 27% of the eligible labour expenditure attributable to printing costs regarding an eligible book or eligible group of books.

However, eligible labour expenditures are limited to 50% of preparation costs and 33⅓% of printing costs. The tax assistance granted can therefore reach 17.5% of preparation costs and 9% of printing costs.

Moreover, regarding an eligible book or eligible group of books, the tax credit cannot exceed $437 500 for the eligible book or for each book that is part of the eligible group of books.

To receive the tax credit for book publishing, an eligible corporation must obtain a favourable advance ruling from the Société de développement des entreprises culturelles (SODEC) or a certificate for each book or group of books. The advance ruling or certificate, as the case may be, certifies that the book or group of books in question is recognized as an eligible book or eligible group of books of the corporation.

In general, the "labour expenditure attributable to preparation costs" of an eligible corporation for a taxation year regarding a property that is an eligible book or eligible group of books means:

— the wages and salaries directly attributable to the preparation of the eligible book or eligible group of books that the corporation incurred in the year,[68] provided they relate to services supplied in Québec for eligible preparation work relating to the eligible book or eligible group of books before the date on which the first printing of the eligible book or the last book that is part of the eligible group of books is completed, and that it paid to its employees in Québec;[69]

— the non-refundable advances directly attributable to the preparation of the eligible book or the eligible group of books that the corporation incurred in the year, in accordance with a contract entered into regarding the eligible book or a book that is part of the eligible group of books, and that it paid to a Québec author or a Québec author's copyright holder, except for such advances paid to a Québec author's copyright holder for the acquisition of rights on existing material;

— the remuneration portion,[70] other than a non-refundable advance, wages or salary, that the corporation incurred in the year[71] for services supplied in Québec to the corporation for eligible preparation work relating to an eligible book or eligible group of books in accordance with a contract entered into regarding the eligible book or a book that is part of the eligible group of books, and that it paid to a subcontractor who is an individual who resides and carries on a business in Québec, a corporation with an establishment in Québec or a partnership carrying on a business in Québec.

Moreover, the "eligible preparation work" relating to an eligible book or eligible group of books means the work done to carry out the publishing stages relating to the eligible book or eligible group of books from the beginning of the publishing work until the stage preceding the printing of the eligible book or of the books included in the eligible group of books.

---

68 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the eligible book or eligible group of books to SODEC, the wages and salaries it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

69 Or within a time considered reasonable by the Minister of Revenue but that may not exceed the date occurring 18 months after the fiscal year end of the eligible corporation that includes the date when the first printing of the eligible book or the last book included in the eligible group of books is completed.

70 Or half the portion of the remuneration where the subcontractor is at arm's length with the eligible corporation at the time the subcontract is entered into.

71 And, in the case of the taxation year during which it submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the eligible book or eligible group of books to SODEC, the portion of the remuneration or half of such portion, as the case may be, it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

Lastly, the "beginning of the publishing work" in relation to an eligible book or eligible group of books means:

— where a publishing contract is entered into by an eligible corporation and the author or one of the authors of such eligible book or of one of the books included in the eligible group of books, one of the following amounts:

  — in the case of an eligible book, the time when the eligible corporation enters into such contract with the author or one of the authors of such book;

  — in the case of an eligible group of books, the time when the eligible corporation enters into the first publishing contract with the author or one of the authors of one of the books of such group;

— in other cases, the date of the application the eligible corporation submits to SODEC to obtain an advance ruling regarding such eligible book or eligible group of books.

Some changes must be made to the tax credit to, on the one hand, adapt it to the practices of the publishing industry and, on the other, standardize the tax treatment applicable to the amounts that make up the labour expenditure attributable to preparation costs. Accordingly, adjustments will be made to the provisions dealing with the beginning of the publishing work and those dealing with non-refundable advances paid to a Québec author or a Québec author's copyright holder.

❑ Beginning of publishing work

■ Tax legislation

It is not exceptional for a publishing contract to be entered into only after an expenditure relating to a book has been made. Since the beginning of publishing work is generally defined as the time when the publisher enters into such a contract with the author, the expenditures relating to an eligible book or eligible group of books but incurred before the said contract is entered into are excluded from the labour expenditure attributable to preparation costs.

Moreover, the beginning of publishing work is difficult to identify in general but may be clearly determined regarding each of the books or the group of books covered by an application for an advance ruling or certificate from SODEC. For this reason, a definition of the "beginning of publishing work" that applies to all cases is almost impossible to achieve. Accordingly, the beginning of publishing work will henceforth be determined by SODEC regarding each eligible book or eligible group of books based on current practice in the publishing industry and on the basis of the specific facts of each case.

Consequently, the definition relating to the beginning of publishing work stipulated in the tax legislation will be replaced so that the beginning of publishing work relating to each eligible book or eligible group of books from now on means the date indicated for that purpose by SODEC in the advance ruling or certificate, as the case may be.[72]

■ Sector parameters

As a corollary, the sector parameters of the tax credit for book publishing will also be amended to stipulate that SODEC will determine the date of the beginning of publishing work relating to each eligible book or eligible group of books, both for the purposes of the tax legislation and those of the sector parameters, and will indicate such date in the advance ruling or certificate, as the case may be, issued for the book or group of books.[73]

❑ Non-refundable advances

In general, the labour expenditure attributable to preparation expenses of an eligible corporation for a taxation year means the wages and salaries as well as a portion of remuneration that are directly attributable to the preparation of an eligible book or eligible group of books, that were incurred by the eligible corporation in the year and, in the case of the taxation year during which the corporation submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding the eligible book or eligible group of books to SODEC, the wages and salaries and the portion of remuneration[74] it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be.

However, the non-refundable advances allowed in the calculation of the labour expenditure attributable to preparation costs of an eligible corporation for a taxation year are limited to those incurred in the year.

---

72 This date must also be used for the qualification of a "Québec author" which means an individual who is an author or an individual who directs the writing of an eligible work or a work included in an eligible group of works written by a team of contributors, and who either resided in Québec at the end of the calendar year preceding the one during which the publishing work began or resided in Québec for at least five consecutive years before the beginning of the publishing work.

73 These changes will be found in the framework legislation consolidating the sector parameters of certain fiscal measures and whose introduction was announced in *Information Bulletin 2007-10*, of December 20, 2007, on p. 16.

74 See note 70.

Consequently, the tax legislation will be amended to include in the calculation of the labour expenditure attributable to preparation costs of an eligible corporation, for a taxation year, the non-refundable advances incurred by the eligible corporation in the year and, in the case of the taxation year during which the corporation submits an application for an advance ruling or, in the absence of such an application, an application for a certificate regarding an eligible book or eligible group of books to SODEC, the non-refundable advances it incurred in a year prior to the one during which it submitted such application for an advance ruling or a certificate, as the case may be, in accordance with a contract entered into regarding the eligible book or a book included in the eligible group of books.

Lastly, like the tax treatment applicable to non-refundable advances paid to a Québec author's copyright holder for the acquisition of rights over existing material, the tax legislation will be amended so that the non-refundable advances paid to a Québec author to acquire rights over existing material are also excluded from the calculation of the labour expenditure attributable to preparation costs.

❑ Application date

These changes will apply to a book, or a book included in a group of books, for which an application for an advance ruling, or an application for a certificate where no application for an advance ruling is filed, is filed with SODEC after the date of publication of this information bulletin.

2.5 Legal effects of replacement or revocation of a document for the purposes of various tax incentive measures

Many tax incentive measures require a certificate, attestation or similar document issued by a public organization other than Revenu Québec (hereunder "document"). For example, for a corporation to receive any of the six refundable tax credits in the cultural field,[75] it must obtain such a document from the Société de développement des entreprises culturelles.

Where such a document is replaced or revoked by the public organization that issued it, Revenu Québec must recover any tax incentive it has already granted before the document was replaced or revoked. In this regard, Revenu Québec may recover the tax incentive by means of a new assessment under Part I of the Taxation Act where the document was replaced or revoked within the deadline stipulated by the Act for doing so,[76] or by an assessment of a special tax where the document is replaced or revoked after such deadline.

---

75 The refundable tax credit for Québec film and television production (sec. 1029.8.34 of the Taxation Act (TA)), the refundable tax credit for film dubbing (sec. 1029.8.36.0.0.1 TA), the refundable tax credit for film production services (sec. 1029.8.36.0.0.4 TA), the refundable tax credit for the production of sound recordings (sec. 1029.8.36.0.0.7 TA), the refundable tax credit for the production of shows (sec. 1029.8.36.0.0.10 TA) and the refundable tax credit for book publishing (sec. 1029.8.36.0.0.13 TA).

76 TA, sec. 1010.

However, the legal effects of the replacement or revocation of a document are not all the same for the purposes of Part I of the Taxation Act. Some tax incentive measures include a special legislative provision stipulating the legal effects of replacement or revocation of a document, while others do not. In the case of these latter measures, recovery of the tax incentive is effected solely by means of an assessment of a special tax.

Moreover, Revenu Québec may recover a tax incentive by an assessment of a special tax where an amount that was included in an eligible expenditure for the purposes of a refundable tax credit for a taxation year is subsequently refunded to the taxpayer who receive the refundable tax credit or where an amount, such as an amount of government assistance, is otherwise paid to the taxpayer or allocated to a payment he must make.[77]

In each case, the assessment of a special tax that is intended to recover a tax incentive applies to the taxation year during which the event that generated such special tax occurs (hereunder "year of assessment of the special tax"), whether for the replacement or revocation of a document, the refund of an expenditure or an amount otherwise paid to a taxpayer who received a refundable tax credit. In these circumstances, the assessment of a special tax cannot occur before the expiration of the filing deadline for the tax return of the year of assessment of the special tax, which corresponds to six months following the end of such year in the case of a corporation, for example. In some cases, this deadline could compromise recovery of the tax incentive.

Accordingly, the tax legislation will be amended, on the one hand, to add a legislative provision to standardize the legal effects of replacing or revoking a document for the purposes of all the tax incentive measures that require a document to be issued by a public organization other than Revenu Québec, like the legislative provision on this matter that applies to the refundable tax credit for dubbing films.[78] This amendment will apply to the tax incentive measures that do not already include such a legislative provision, excepting however the tax measures that are excluded from the application of the special tax stipulated by Part VI.3.1 of the Taxation Act in relation to the revocation or replacement of certificates or similar documents.[79]

This amendment will apply to the replacement or revocation of a document by a public organization after the day of publication of this information bulletin.

In addition, the tax legislation will be amended so that the assessment of a special tax intended to recover a tax incentive arising from a refundable tax credit a taxpayer received in a prior taxation year can be made as soon as the event generating the assessment of the special tax occurs.

---

77 In this situation, Revenu Québec can assess a special tax, for a given taxation year, where an eligible expenditure that was considered for the purposes of a refundable tax credit that a taxpayer received for a prior taxation year is reimbursed to the taxpayer. Such an assessment may also be made where the taxpayer receives, is entitled to receive or can reasonably expect to receive a benefit or advantage after the filing deadline applicable to him for the prior taxation year or where an amount is otherwise paid to the taxpayer or is allocated to a payment he must make, after such date.

78 TA, sec. 1029.8.36.0.0.3.

79 These are the deductions in the calculation of taxable income or of tax payable stipulated in titles V, VI.3 and VI.9 of book IV or in title V of part I of the TA. See section 1175.28.12, 2nd subpar., par. *a* TA.

This amendment will apply regarding an assessment of a special tax by Revenu Québec after the day of publication of this information bulletin.

2.6 Recognition of new centres as a college technology transfer centre and as an eligible public research centre

A corporation that carries on a business in Québec and has an establishment there can obtain a refundable tax credit for technology adaptation services of 50% in relation to eligible liaison and transfer services carried out on its behalf by a college technology transfer centre (hereunder "CTTC") in the course of a contract that the corporation entered into with such centre.

A taxpayer who carries on a business in Canada can obtain a refundable tax credit for scientific research and experimental development (R&D) of 35% in relation to R&D activities carried out on his behalf, in Québec, by an eligible public research centre in the course of an eligible research contract that the taxpayer enters into with such a centre.

In this regard, it is the responsibility of the Ministère des Finances to recognize a research centre as a CTTC and as an eligible public research centre for the purposes of these two refundable tax credits.

To recognize a centre as a CTTC for the purposes of the refundable tax credit for technology adaptation services, the Ministère des Finances checks with the Ministère de l'Éducation, du Loisir et du Sport whether it has recognized the centre as a CTTC.

To recognize a centre as an eligible public research centre for the purposes of the refundable tax credit for R&D, the Ministère des Finances requires that the centre demonstrate its capacity, in terms of human, physical and financial resources, to carry out R&D work on behalf of businesses. Accordingly, the employees of the centre must have the qualifications required to carry out R&D work awarded on a sub-contracting basis to the research centre, and the research centre must have premises and equipment that enable it to do the work in its field of expertise.

In addition, the research centre must obtain most of its financing from public funds.

Moreover, all research centres that the Ministère des Finances has recognized as eligible public research centres must annually confirm with the Ministère des Finances that they satisfy the eligibility criteria listed above. This annual return relates to a calendar year and must be filed no later than the last day of February following such calendar year.

Lastly, an eligible public research centre must advise the Ministère des Finances as soon as a change occurs, regarding human, physical or financial resources, that could compromise its capacity to carry out R&D work on behalf of businesses or to satisfy the requirement relating to the source of its funding.

In this context, two new centres will be recognized as CTTCs for the purposes of the refundable tax credit for technology adaptation services, and will also be recognized as eligible public research centres for the purposes of the refundable tax credit for R&D. In addition, another centre will be recognized as an eligible public research centre for the purposes of refundable tax credit for R&D.

Accordingly, the Centre en imagerie numérique et médias interactifs (CIMMI) (hereunder "CIMMI") and the Cégep Maisonneuve, regarding its Institut de technologie des emballages et du génie alimentaire (hereunder "ITEGA"), will be recognized as CTTCs for the purposes of the refundable tax credit for technology adaptation services, and as eligible public research centres for the purposes of the refundable tax credit for R&D, and the Centre technologique des résidus industriels (hereunder "CTRI") will be recognized as an eligible public research centre for the purposes of the refundable tax credit for R&D.[80]

Recognition of the CIMMI will apply regarding eligible liaison and transfer services and regarding R&D carried out by the centre after August 11, 2010 under a contract entered into after that date, while recognition of the CTRI will apply regarding R&D carried out by the centre after June 9, 2010 under a contract entered into after that date.

Recognition of the Cégep Maisonneuve, regarding the ITEGA, will apply regarding eligible liaison and transfer services and regarding R&D carried out by the centre after December 31, 2008 under a contract entered into after that date.

80 The CTRI is already recognized as a CTTC for the purposes of the refundable tax credit for technology adaptation services.

3. FEDERAL LEGISLATION AND REGULATIONS

3.1 Harmonization with revised legislative proposals concerning foreign investment entities and non-resident trusts

Proposals to amend the provisions of the Income Tax Act bearing on foreign investment entities and non-resident trusts were announced for the first time in the federal budget of February 16, 1999.[81] Subsequently, consultations were held and the Department of Finance Canada announced changes to these proposals.[82]

The Ministère des Finances du Québec announced that, generally speaking, Québec's tax legislation and regulations would be amended to incorporate, with adaptations on the basis of their general principles, these legislative amendments relating to the taxation of foreign investment entities and non-resident trusts, taking into account any technical changes that may be made to them.[83]

In the March 4, 2010 budget,[84] the federal government announced that it had developed revised proposals relating to foreign investment entities and non-resident trusts, which replace the measures proposed earlier.

The Ministère des Finances du Québec announced, in the 2010-2011 Budget,[85] that it would indicate its position on these revised proposals at a later date.

---

81 DEPARTMENT OF FINANCE CANADA, *The Budget Plan 1999 – Building today for a better tomorrow*, February 16, 1999, Annex 7, Tax Measures: Supplementary Information and Notices of Ways and Means Motions, p. 194.

82 DEPARTMENT OF FINANCE CANADA, *News Release 1999-102*, November 30, 1999; DEPARTMENT OF FINANCE CANADA, *News Release 2000-050*, June 22, 2000; DEPARTMENT OF FINANCE CANADA, *News Release 2001-067*, August 2, 2001; DEPARTMENT OF FINANCE CANADA, *News Release 2002-084*, October 11, 2002; DEPARTMENT OF FINANCE CANADA, *News Release 2003-054*, October 30, 2003; DEPARTMENT OF FINANCE CANADA, *News Release 2005-049*, July 18, 2005; DEPARTMENT OF FINANCE CANADA, *News Release 2006-065*, November 9, 2006.

83 MINISTÈRE DES FINANCES DU QUÉBEC, *1999-2000 Budget – Additional Information on the Budgetary Measures*, March 9, 1999, p. 98; MINISTÈRE DES FINANCES DU QUÉBEC, *Bulletin d'information 2002-13*, December 19, 2002, p. 38; MINISTÈRE DES FINANCES DU QUÉBEC, *Bulletin d'information 2003-7*, December 12, 2003, p. 48; MINISTÈRE DES FINANCES DU QUÉBEC, *2006-2007 Budget – Additional Information on the Budgetary Measures*, March 23, 2006, p. 157.

84 DEPARTMENT OF FINANCE CANADA, *Canada's Economic Action Plan (Year 2) – Budget 2010: Leading the Way on Jobs and Growth*, March 4, 2010, Annex 5, Tax Measures: Supplementary Information and Notices of Ways and Means Motion, p. 371.

85 MINISTÈRE DES FINANCES DU QUÉBEC, *2010-2011 Budget – Additional Information on the Budgetary Measures*, March 30, 2010, p. A.127.

On August 27, 2010,[86] the Department of Finance Canada released, for consultation, Legislative Proposals relating to the Income Tax Act, the Air Travellers Security Charge Act, the Excise Act, 2001, and the Excise Tax Act (hereunder "revised legislative proposals"). The revised legislative proposals implement the tax measures stipulated in the March 4, 2010 budget and are designed, in particular, to replace the previous proposals relating to foreign investment entities with several limited enhancements to the current Income Tax Act and to better target and simplify previous proposals relating to non-resident trusts, taking into account the comments received during post-budget consultations.

Since, as a general rule, Québec's tax system is harmonized with the federal tax system insofar as the rules relating to foreign investment entities are concerned, Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the amendments made to the federal tax legislation and regulations by the revised legislative proposals concerning foreign investment entities. For greater clarity, the interest rate applicable to calculate the amount to include in a taxpayer's income, for the purposes of this measure, will correspond to the interest rate stipulated by the federal tax legislation and regulations to calculate the amount to include in income for federal tax purposes.

Québec's tax system is generally harmonized with the federal tax system insofar as the rules relating to non-resident trusts are concerned. Québec's tax legislation and regulations will also be amended to incorporate, with adaptations on the basis of their general principles, the amendments made to the federal tax legislation and regulations by the revised legislative proposals concerning non-resident trusts. However, a non-resident trust that is deemed to reside in Canada because it has a resident contributor, as understood in the revised legislative proposals, will not be deemed to reside in Québec, for a given taxation year, unless the contributor resident in Canada is also resident in Québec or, if such contributor is a corporation, it has an establishment in Québec. In the case where the non-resident trust is deemed to reside in Canada because it has a resident beneficiary and a connected contributor, as understood in the revised legislative proposals, it will not be deemed to reside in Québec unless such beneficiary is also a resident of Québec or, if such beneficiary is a corporation, it has an establishment in Québec, and a connected contributor made a contribution to the trust, as understood in the revised legislative proposals, while it was resident in Québec or, if such contributor is a corporation, while it had an establishment in Québec.

Moreover, the changes that will be made to Québec's tax system will be adopted only after the assent of any federal statute or the adoption of any federal regulations implementing the retained measures, taking into account technical amendments that may be made prior to such assent or adoption. These amendments will apply on the same dates as those for the purposes of the federal amendments to which they are harmonized.

86 DEPARTMENT OF FINANCE CANADA, *News Release 2010-074*, August 27, 2010.

3.2 Harmonization concerning certain prescribed American donees

As a general rule, any person who donates property is deemed to alienate it at its fair market value, such that he may realize a capital gain if the property is a fixed asset that has appreciated in value since its acquisition.

Persons who do not reside in Canada are subject to federal tax on the taxable capital gain they realize as a result of the alienation of an immovable property located in Canada. They are also subject to Québec income tax on such gain in every case where, in particular, the immovable property is located in Québec.

However, the federal and Québec tax laws allow a person who is not a resident of Canada to reduce or cancel the capital gain resulting from the alienation of an immovable property located in Canada if the property is given to a prescribed donee.

Briefly, where a person who is not a resident of Canada donates immovable property located in Canada to a prescribed donee who undertakes that the property be held for use in the public interest, such person may designate, in his federal tax return he must file for the year during which the donation is made, an amount less than the fair market value of the donated property that will be deemed the proceeds of the alienation of the immovable property.

Until just recently, only two charities,[87] established in the United States, were prescribed donees for the purposes of this measure both for federal and Québec tax purposes.

On September 23, 2010, the federal tax regulations were amended to recognize a third foreign charity, namely the American Friends of Canadian Land Trusts, as a prescribed donee for the purposes of this measure.[88]

Since Québec's tax system contains provisions that are essentially identical to those of the federal tax system regarding the donation of an immovable property located in Canada by a person who does not reside there, Québec's tax regulations will also be amended to recognize the American Friends of Canadian Land Trusts as a prescribed donee for this purpose. This amendment will apply as of taxation year 2010 and following.

87 Namely Friends of the Nature Conservancy of Canada, Inc. and The Nature Conservancy.

88 Regulations Amending the Income Tax Regulations (Charitable Donations), SOR/2010-197, (2010) 144 *Canada Gazette*, Part II, 1829 (No. 21, 13/10/2010).

3.3 Harmonization with the tax rebate measure concerning the Royal Canadian Legion

On October 28, 2010, the Minister of Finance of Canada and the Minister of Veterans Affairs announced, in a news release, an amendment to the Excise Tax Act to provide a full rebate of the goods and services tax (GST) paid on Remembrance Day wreaths and poppies acquired by the Royal Canadian Legion from private sector suppliers. [89]

In accordance with the principle of general harmonization of the Québec sales tax (QST) and GST systems, QST system will be amended to incorporate, with adaptation on the basis of its general principles, this federal rebate measure.

The measure will be adopted in the QST system only after the assent given to any law arising from the federal news release, taking into account technical amendments that may be made prior to such assent. It will apply on the same date as the one retained for the purposes of the federal measure to which it is harmonized.

89 DEPARTMENT OF FINANCE CANADA, *News Release 2010-101*, October 28, 2010.